



Steven R. Meyers
Attorney at Law
213.626.2906

October 24, 2007

California High-Speed Rail Authority
EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Comments on Draft Bay Area to Central Valley High-Speed Train Program Environmental Impact Report/Environmental Impact Statement

Dear Sir/Madam:

The City of Millbrae ("the City" or "Millbrae") strongly supports a high speed rail system through the Bay Area and beyond that will ease traffic congestion and diversify transportation options. Indeed, Millbrae has embraced the opportunities presented by the BART/Caltrain/SamTrans station ("the Station") recently constructed in the City and has invested a considerable amount of time and money adopting a specific plan (the "Millbrae Station Area Specific Plan" or "the Specific Plan") to develop the area around the Station to complement these rail facilities. The Specific Plan will connect this intermodal transportation center to adjacent neighborhoods and the downtown area, intensify land uses immediately surrounding the new Station with a mixture of office, hotel, retail and residential uses, and enhance the Station area through the creation of a civic open space known as "Station Square," while implementing a comprehensive program of roadway improvements that will address regional and local goals and objectives for improvement of traffic circulation and reduced dependence on single-occupancy vehicles. (See Millbrae Station Area Specific Plan attached hereto as Exhibit A.)

L022-1

The City's plans for this area surrounding the Station have been developed as part of a highly public process, and have been shared with Caltrain and SamTrans since the 1990's with full support from both Caltrain and SamTrans. However, it has recently come to the City's attention that the California High-Speed Rail Authority has proposed its plan for the high speed rail project and now intends to add two tracks to the existing two tracks (total four tracks) for the operation of a high speed rail system. The current plan for the high speed rail system proposed in the Draft Bay Area to Central Valley High-Speed Train Program Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") calls for four tracks to go through Millbrae instead of the currently existing two tracks, requiring expansion of the existing Station to the west by approximately one hundred feet (100') to accommodate the extra two tracks, the platforms and security fences and the construction of a new parking garage to the west of the Station. These new tracks and parking structure are proposed to be constructed on the same lands as Site One of the Millbrae Specific Plan and its accompanying infrastructure and would fundamentally undermine the City's extensive

L022-2

efforts over the last ten plus years to connect this intermodal transit center to the community. Millbrae submits this comment letter to address these serious issues.¹

L022-2
Cont.

Historical Context

In the 1990's and early 2000's, the Millbrae BART/ Caltrain/SamTrans Station was constructed. When the Station was being developed, plans envisioned use of the Station for various modes of heavy commuter rail, as well as for the BART System. The Station was envisioned as the key transfer point between BART, Caltrain, future high speed rail and the San Francisco International Airport, a true "intermodal" station. The City understood that this facility would become one of the most significant transit hubs in Northern California and adopted the Specific Plan on November 24, 1998, to weave the Station into the fabric of the community.

The portion of the Specific Plan directly to the west of the Station is known as Site One. Site One will provide linkages between the Station and the existing downtown area, improve traffic and circulation patterns in the vicinity, and provide high density housing, hotel, office, retail and restaurant space adjacent to the Station. The City also committed in the Specific Plan to extend California Drive between the Station and Site One, and to connect California Drive to El Camino Real at Victoria Avenue, providing an important parallel reliever route to a west side transit center for pedestrian, kiss and ride and various SamTrans transit and bus services. (See Specific Plan, Exhibit A.)

L022-3

Site One encompasses portions of and interests in Railroad Avenue, which abuts the Station to the west, that were acquired by SamTrans and BART as a result of the construction of the Station, but which were not needed for the Station. As a result of litigation involving the development of the Station, the City, SamTrans and BART entered into a Stipulated Agreement in 1999 whereby SamTrans agreed to convey to the City these portions of Railroad Avenue after the City had executed a development agreement to develop Site One. (Stipulated Agreement is attached as Exhibit B). The parties all understood, as evidenced by language in the stipulated agreement, that the development of Site One of the City's Specific Plan was dependent on Caltrain's existing two-track configuration.

This understanding was reiterated in a second agreement executed in 2001 by the same three parties in which the City agreed to temporarily convey to BART a parking area to the west of the Station and south of Railroad Avenue as a "kiss and ride" area. This 2001 agreement provides that the Peninsula Joint Powers Board (JPB) would relinquish all claim to these lands after the City executes a development agreement for development of Site One of the Specific Plan and the development of the West Side Transit Center. ("Kiss and Ride" Agreement is attached as Exhibit C.)

Since it was adopted in 1998, the City has proceeded to move forward in execution of the Specific Plan. 350 new housing units are complete or under construction, most within 800 feet of the

¹ The comment period was originally set to close on September 28, 2007, but has been extended to October 26, 2007.

Station. In 2003, the City began discussions with developers to put wheels in motion to bring Site One of the Specific Plan to life. In an abundance of caution, the City sent letters to BART, SamTrans and the JPB to confirm that both entities would abide by the terms of the 1999 and 2001 agreements and convey the "kiss and ride" and Railroad Avenue parcels to the City upon execution of a development agreement. Both the JPB and SamTrans agreed that they fully intended to abide by these agreements and were prepared to convey both parcels to the City as provided in the agreements.

L022-3
Cont.

In 2005, the City learned that the proposal for a high speed rail line through Millbrae had changed from use of only the two existing tracks to four tracks, including two new tracks to the west of the existing Station. The additional two tracks as planned would displace the California Drive Extension and West Side Transit Center and Site One of the Specific Plan. City staff promptly met with Caltrain officials and were told that Caltrain would have their engineers find a way to accommodate both the high speed rail line and the Specific Plan development. Caltrain officials assured City staff that the high speed rail project would continue to move forward utilizing either the existing two tracks within the new Station, or a minimal approach to the alignment of new tracks that would not eliminate important west side Specific Plan features.

L022-4

Current Conflicts Between Specific Plan Development and the High Speed Rail Project

The City has now entered into an Exclusive Rights Agreement with a developer poised to begin development of Site One. The City circulated a negative declaration for the adoption of the Development and Disposition Agreement for Site One of the Specific Plan in August of 2007. A copy of the negative declaration was mailed to SamTrans and Caltrain. The City did not receive any comments from either SamTrans or Caltrain. The comment period closed on September 19, 2007.

On September 25, 2007, the City received notice for the first time that a draft EIR/EIS on the high speed rail project had been out for public comment since the beginning of July 2007. Upon examination of the EIR/EIS, the City learned that the California High Speed Rail Authority ("Authority") is again proposing a broad four track high speed rail configuration, with the two additional tracks and a large parking structure to be built in the area to the west of the Station, squarely in Site One of the City's Specific Plan.

The EIR/EIS completely ignores the impacts the current proposed configuration of the high speed rail line would have on Millbrae's Specific Plan. Indeed, the only mention of the Specific Plan is in the Millbrae Station Fact Sheet under Current City Plans. However, the Fact Sheet fails to mention that the proposed Station layout including the two new tracks and the new parking structure would occupy the same site as the Site One development, the California Drive Extension and the West Side Transit Center.

L022-5

As discussed above, Caltrain officials and staff have been aware of the City's Specific Plan configuration for almost a decade. Indeed, Caltrain has repeatedly acknowledged its obligation to transfer lands to the City upon the execution of a development agreement for Site One, lands which would be necessary to construct the extra two tracks proposed in the draft EIR/EIS. Caltrain

officials are aware that the High Speed Rail project as currently proposed would virtually eliminate the City's ability to execute important project features of the Specific Plan, resulting in significant environmental impacts, including worsening traffic and circulation problems in the Station area, yet these impacts are not disclosed or even alluded to in this EIR/EIS.

L022-5
Cont.

City staff met with the Caltrain staff on October 18, 2007. The Caltrain staff was not aware of the four track with parking structure configuration proposed by the Authority in the current EIR/EIS. The Caltrain staff believes that high speed rail can be accommodated through Millbrae in a much narrower alignment that may be able to co-exist with proposed west side improvements envisioned in the Millbrae Specific Plan.

NEPA and CEQA Deficiencies

The Millbrae Station Area Specific Plan was adopted in 1998 and is part of the baseline conditions for the proposed high speed rail line. Eliminating Millbrae's planned improvements to the Station area will cause significant environmental impacts, including cumulative impacts, to traffic, aesthetics, land use, public services, and economic and social effects interrelated with these environmental impacts. None of these impacts have been addressed at all in the EIR/EIS in violation of NEPA and CEQA. (40 C.F.R. 1502.16 and 1508.8[b]; CEQA Guidelines Section 15130.)

L022-6

The Traffic, Transit, Circulation & Parking chapter of the EIR/EIS describes the current traffic situation at the Station, but does not even mention the traffic and circulation improvements called for in the City's Specific Plan for the area which was adopted in 1998 and is now in the process of implementation (EIR/EIS, pp. 3.1-15 to 3.1-16.) It also indicates that BART has improvements planned for the east side of the Station to reduce single occupancy vehicular traffic, but does not mention that the improvements planned by BART are designed to work in conjunction with the City's Specific Plan. (EIR/EIS, pp. 3.1-24 to 3.1-25.) Finally, the California Department of Transportation has identified "conflicts with adopted policies, plans, programs that support alternative transportation" to be a significance criteria requiring CEQA analysis. (EIR/EIS, p. 3.1-4.) The proposed high speed rail line configuration through Millbrae will directly conflict with the City's Specific Plan which includes a host of measures to support alternate forms of transportation to and from work and residences. Thus, even the significance criteria identified in the EIR/EIS requires consideration of the impacts on the Specific Plan.

L022-7

The Aesthetic chapter of the EIR/EIS erroneously concludes that there will be no significant visual impact by construction of the additional tracks and parking structure in Millbrae by again ignoring the Specific Plan. (EIR/EIS, p. 3.9-7.) As discussed above, the Specific Plan was adopted in 1998 and a negative declaration was recently circulated to begin development of Site One (part of the Specific Plan) to the west of the existing Station, the same area proposed for placement of the two additional tracks and parking structures. The EIR/EIS describes only the current setting at the Station in determining that a single historical building will need to be moved; it makes no mention of the major aesthetic improvements for the area included in the Specific Plan that will be eliminated by the proposed project. (EIR/EIS, p. 3.9-15.)

L022-8

The Land Use Planning chapter of the EIR/EIS is equally deficient. The chapter contains no discussion whatsoever of the land uses in the Specific Plan nor any mention of the fact that the City has four major mixed use developments either completed or under construction and is developing the area surrounding the Station pursuant to the standards of the Specific Plan. (EIR/EIS, pp. 3.7-6 to 3.1-7.) The discussion erroneously concludes that there would be no community cohesion impacts from the proposed project, when the project will eliminate the City's imminent implementation of the Site One development designed to create community cohesion between the existing Station, the downtown area, residential, commercial, retail and recreational uses. (EIR/EIS, pp. 3.7-19 to 3.1-20, Table 3.7-3.) This chapter also contains information and conclusions that are completely false, such as the statement on p. 3.7-30 that "the Millbrae Station location option would be highly compatible with the existing station and would support future planned use for creation of a transit-oriented district surrounding the Millbrae BART/Caltrain station area." In reality, the Millbrae Station location option as described in the EIR/EIS is entirely *incompatible* with the City and BART's plans to create a transit-oriented district around the Station area, and would create a difficult barrier for access to the Station from most of the City of Millbrae.

There is no mention of the Millbrae Specific Plan in any other chapter of the EIR/EIS, nor is there any discussion of cumulative environmental impacts from the Millbrae proposed project segment.

L022-9

NEPA is designed to ensure that environmental information is available to public officials and citizens *before* decisions are made and actions are taken. (NEPA Regulations, 40 C.F.R. 1500.1(b).) A programmatic EIS should emphasize cumulative impacts and policy-level alternatives. "[T]he purpose of an [EIS] is to evaluate the possibilities in light of current and contemplated plans and to produce an informed estimate of the environmental consequences.... Drafting an [EIS] necessarily involves some degree of forecasting." (*City of Davis v. Coleman* (9th Cir.1975) 521 F.2d 661, 676.)

If it is reasonably possible to analyze the environmental consequences in the EIS for the high speed rail project, the agency is required to perform that analysis. (*Kern v. U.S. Bureau of Land Management* (2002) 284 F.3d 1062.) As the court discussed in *Kern*, the program EIS analysis may be more general than a subsequent project level analysis, and it may turn out that a particular environmental consequence must be analyzed in both the program EIS and later project level analysis, but an earlier EIS analysis will not have been wasted effort, for it will guide the later analysis and, to the extent appropriate, permit "tiering" to the program level EIS in order to avoid wasteful duplication. (*Id.*)

In this situation, the high speed rail EIR/EIS must disclose the impacts in Millbrae, and specifically the impacts to the Millbrae Station Area Specific Plan, that would result from the proposed project. The document should also present an alternative that avoids these serious impacts, such as a high speed rail design in a much more limited right-of-way, or a plan to seek an operationally feasible alternative utilizing only the two existing tracks for the high speed rail line in Millbrae. The rail system could reasonably accommodate this change to the proposed project design by scheduling passing situations between the high speed trains and local trains to occur on locations in the rail corridor other than Millbrae, where three or four tracks are already provided. Indeed, Caltrain has for many years been assiduously expanding its track capacity throughout the corridor in

anticipation of their need. This is a policy level decision, it must be discussed and analyzed in this program EIR/EIS.

Under CEQA, program EIRs should deal with the effects of a program as specifically and comprehensively as possible. (CEQA Guidelines Section 15168.) "A program EIR is designed to '(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action, [¶] (2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis, [¶] (3) Avoid duplicative reconsideration of basic policy considerations, [¶] (4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, [and] [¶] (5) Allow reduction in paperwork.'" (Guidelines, § 15168, subd. (b).)" (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 531.)

The legally required contents of a program EIR are the same as a project EIR, it is simply the level of detailed analysis that differs. An EIR must set forth all significant effects of a project on the surrounding environment. (Pub. Resources Code, § 21100, subd. (b)(1).) A significant effect on the environment is a "substantial, or potentially substantial, adverse change[] in physical conditions which exist within the area" of the project. (Pub. Resources Code, § 21100, subd. (d).) Indeed, the CEQA Guidelines require a lead agency to "use its best efforts to find out and disclose all that it reasonably can" in an EIR. (CEQA Guidelines Section 15144.).

L022-9
Cont.

In order to assess a project's impacts, an EIR must first place the project in its proper perspective by describing the existing environment. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.) In this case, the existing environment in Millbrae includes the City's development of the Station area pursuant to the Specific Plan. As discussed above, Caltrain has been fully aware for many years of the significant impacts the proposed configuration of the high speed rail line would have on the Millbrae Specific Plan and the City of Millbrae. The Millbrae Station Fact Sheet in the EIR/EIS mentions the City's Specific Plan, but this information is utterly missing from the rest of the EIR/EIS and there is no discussion anywhere in the document as to the impact on the Specific Plan and associated improvements from the proposed high speed rail project. The primitive, hand-drawn graphics in the EIR/EIS describing the proposed project in Millbrae certainly do not indicate a determined effort to analyze all impacts. Since the description of the existing environment of the high speed rail project in the EIR/EIS is inaccurate and incomplete by omitting any discussion of the existing environment in Millbrae, the analysis that follows is flawed and the EIR does not comply with CEQA. (See *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 87; CEQA Guidelines Sections 15126.2, 15126.4, 15130 and 15131.)

Conclusion

For the foregoing reasons, if the high speed rail line project moves forward as proposed in a four track configuration through Millbrae with a large parking structure to the west of the existing Station, the City's development plans for Site One and the entire California Drive and West Side Transit Center configuration, a fundamental and indispensable component of infrastructure of the Millbrae Specific Plan, will be substantially damaged, if not eliminated. The EIR/EIS does not

describe the baseline conditions in Millbrae (development of the Station area pursuant to the Specific Plan) and fails to address the significant environmental impacts on the Millbrae Station Area from the two new tracks, parking structure and security fencing. This is a violation of NEPA and CEQA.

Millbrae received assurances from officials at Caltrain and SamTrans for years that the 1999 and 2001 agreements to convey parcels to the City for development of Site One of the Specific Plan, California Drive Extension and the West Side Transit Center would be honored and that the high speed rail project through Millbrae would not jeopardize these plans. However, the high speed rail project as proposed in the EIR/EIS, with four tracks through Millbrae, and an additional parking structure would take these parcels for use by the high speed rail line, vitiating both the 1999 and 2001 agreements and the Specific Plan itself.

The City strongly encourages the Authority to revise the proposed project with a configuration through the City of Millbrae that does not irretrievably damage the City's plans for Station Area development and infrastructure.

Very truly yours,



Steven R. Meyers
Counsel to the Millbrae Redevelopment Agency

1021914_1

L022-9
Cont.

**CITY COUNCIL
AGENDA REPORT**



**CITY OF MILLBRAE
621 Magnolia Avenue
Millbrae, CA 94030**

SUBJECT: Report Regarding Comment by the City of Millbrae and Millbrae Redevelopment Agency on the Draft EIR for the Bay Area to Central Valley High Speed Train Program EXHIBITS: A: Comment of the City of Millbrae and the Millbrae Redevelopment Agency on the Draft EIR/EIS for the Bay Area to Central Valley High Speed Train Program	Report No.
	For Agenda of: October 23, 2007
	Department: Community Development
	Originator: Ralph Petty
Approved:	
Budget Action? Yes: _____ No: <u> X </u> General Services Review:	

REPORT TYPE: ACTION _____ INFORMATION <u> X </u>
ITEM TYPE: CONSENT _____ PUBLIC HEARING _____ OLD BUSINESS <u> X </u> NEW BUSINESS _____

RECOMMENDATION: That the City Council and Agency Board consider the attached comment on the Draft EIR/EIS and direct staff to submit the comment to the California High Speed Rail Authority prior to October 26, 2007.

BACKGROUND: At their October 9, 2007 meeting, the City Council and Redevelopment Agency Board directed staff to work with Agency Counsel Steve Meyers to prepare comment on the draft EIR/EIS for the Bay Area to Central Valley High Speed Train Program.

Millbrae supports the improvement of the State's rail systems, including the proposed high speed train plan. However, it is important that the California High Speed Rail Authority and CalTrain understand and respect the ongoing efforts of local cities to implement transit oriented development around transportation hubs.

To that end, Millbrae's comment on the High Speed Train Program EIR/EIS is intended to make rail planners aware of the constraints around the Millbrae Intermodal Station and of longstanding plans for improvements and development on the west side of the Millbrae Station. Millbrae recommends that the operators of the train program carefully consider a more narrow high speed configuration or the two track operational solution through Millbrae, to limit impacts to the ongoing implementation of the Millbrae Station Area Specific Plan.

FISCAL IMPACT: None at this time.

COUNCIL ACTION: Direct staff as recommended above.